

U. S. GOVERNMENT LEASE
FOR REAL PROPERTY (Short Form)

REQUIREMENTS

A. The Government of the United States of America is seeking to lease approximately 4200 to 4400 net usable square feet of office space located in Midtown Manhattan, N.Y., N.Y. for occupancy not later than December 1, 1992 (date).

OFFER (To Be Completed by Offeror/Owner)

INSTRUCTIONS TO OFFEROR: Complete the following blocks on this form.

Block Identification:

- C. The name and address of the owner(s) of the property. If a partnership or a joint venture, list all General Partners; use a separate sheet, if necessary. Provide owner's Social Security or Taxpayer ID Number; DUNS Number (if known).
D. Check the "Yes" or "No" box to indicate if owner is a corporation.
E. Check the appropriate box to indicate if owner is a small, small disadvantaged, or women-owned small business.
F. Complete the signature block. Print the name of the owner or authorized representative, check the appropriate relationship, sign and date the form.
2a. Insert name, room or floor number, street address, city or town, state, and zip code.
2b. Insert the net usable square feet offered and type of space. Government Representative will provide information on measurement of Net Usable Square Feet.
4. Enter the rental rate offered, stated as an annual amount, even though the term may be for a period of less than 12 months.

B. This Offer shall remain open until Close of Business on December 1, 1992 (date).

C. Name and Address of Owner (Include Zip Code)

Telephone Number: (212) 582-8020

666 Fifth Avenue Limited Partnership

666 Fifth Avenue

New York, New York 10103

DUNS Number: 13-341-66-07

Taxpayer Identification Number (TIN) or Social Security Number

D. Owner is a corporation ☐ Yes ☒ No

E. Owner is ☐ a small business ☐ a small disadvantaged business ☐ a women-owned small business.
(Small means a concern and its affiliates that is independently owned, is not dominant in the field of operation, and has an annual average gross receipts of \$10 million or less for the preceding three fiscal years.)

F. Name and Title of Person Authorized to sign Offer (Type or Print) ☐ Owner ☒ Authorized Representative
Name: Futoshi Shishika Title: Exec. Vice President

Signature: (b) (6) the Corporate General Partnership Date: 8/25/92

AWARD (To Be Completed by Government)

G. This award will be made on the basis of:

☐ The acceptable offer with the lowest per net usable square foot price.

☒ Offer which is most advantageous to the Government, with price being [equal to] ~~less important than~~ the following selection factors. Factors are listed in descending order unless stated otherwise.

1. Delivery

2. Security

H. Acceptance of offer and award: This lease contract consists of 40 pages, including the following attachments which are incorporated and made a part hereof:

☒ Representations and Certifications; 3518 A

☒ Floor Plan: Exhibit "A"

☒ General Clauses; 3517B

☒ Other (specify): Lease Rider, Attachment #1;

Supplemental Lease Requirements for Small and Temporary Lease;

Attachment to U.S. Government Lease for Real Property Form

I. THIS AWARD IS NOT BINDING ON THE GOVERNMENT OF THE UNITED STATES OF AMERICA UNLESS SIGNED BELOW BY AUTHORIZED CONTRACTING OFFICER.

United States of America (Contracting Officer):

Name: CAROL ANN DIAZ
(Print or Type)

Signature: (b) (6)
Date: October 14, 1992

U. S. GOVERNMENT LEASE
FOR REAL PROPERTY (Short Form)

1. LEASE NUMBER: GS-02B-22660
Building number: NY7023zz

The LESSOR leases to the UNITED STATES OF AMERICA, hereinafter called the GOVERNMENT, the described premises on the terms stated herein.

2a. LOCATION AND DESCRIPTION OF LEASED PREMISES:

Name and Address of Building:

666 Fifth Avenue
New York, New York 10103

Location in Building: Floor 6th and/or Room Number(s) Part 6th Floor

b. Premises comprised of 4216 net usable square feet of

☒ General Office

☐ Warehouse

☐ Other (Specify) _____

3. TERM. To have and to hold: 12/1/92 and continuing through 11/30/2002
For the term commencing on _____

RENTAL. The Government shall pay the Lessor annual rent of \$ 198,000.00 for years 1 through 10
at the rate of \$ 16,500.00 per month.

Rent shall be payable in arrears and will be due on the first workday of each month. When the date for commencement of rent falls after the 15th day of the month, the initial rental payment shall be due on the first workday of the second month following the commencement date. Rent for a lessor period shall be prorated. Rent checks shall be made payable to:

Agent; or to its successor
Wm. A. White/Grubb & Ellis Inc., as at the following address:
(name of payee)

55 East 59th Street
New York, New York 10022

5. SERVICES AND UTILITIES provided by Lessor as part of the rent:

☒ HEAT

☒ TRASH REMOVAL

☒ TOILET SUPPLIES

☒ ELECTRICITY

☐ CHILLED DRINKING WATER

☒ JANITORIAL SERVICE & SUPPLIES

☐ POWER (Special Equipment)

☒ AIR CONDITIONING

☒ INITIAL AND REPLACEMENT LAMPS,
TUBES AND BALLASTS

☒ WATER (Hot and Cold)

☒ ELEVATOR SERVICE

☒ PAINTING FREQUENCY

☒ SNOW REMOVAL

☒ WINDOW WASHING
Frequency periodically

Space 5 years
Public Area as required

☐ OTHER (Specify)

☒ CARPET CLEANING
Frequency every 2 years

6. STANDARD CONDITIONS AND REQUIREMENTS.

- First class office space is required. Space offered must be in a quality building of sound and substantial construction, either a new, modern building or one that has undergone first class restoration or rehabilitation for the intended use.
- The Lessor shall provide a valid occupancy permit for the intended use of the Government and shall operate the building in conformance with local codes and ordinances.
- The building and the leased space shall be accessible to the handicapped.
- The leased space shall be free of all asbestos containing materials, except undamaged vinyl asbestos floor tile in the space or undamaged boiler or pipe insulation outside the space.
- Services, utilities, and maintenance will be provided daily, extending from 8:00 a.m. to 6:00 p.m. except Saturday, Sunday, and Federal holidays. The Government shall have access to the leased space at all times, including the use of electrical services, toilets, lights, elevators, and small business machines without additional payment.

7. OTHER REQUIREMENTS.

The space offered must be contiguous on one floor and the Government will not accept below grade space or street level.

SEE ATTACHMENTS.

SFO# MNY91577
Exempt (b) (7)

(A) THE GOVERNMENT SHALL PAY ADDITIONAL RENT FOR ITS SHARE OF INCREASES IN REAL ESTATE TAXES OVER TAXES PAID FOR THE CALENDAR YEAR IN WHICH ITS LEASE COMMENCES (BASE YEAR). PAYMENT WILL BE IN A LUMP SUM AND BECOME DUE ON THE FIRST WORKDAY OF THE MONTH FOLLOWING THE MONTH IN WHICH PAID TAX RECEIPTS FOR THE BASE YEAR AND THE CURRENT YEAR ARE PRESENTED, OR THE ANNIVERSARY DATE OF THE LEASE, WHICHEVER IS LATER. ~~THE GOVERNMENT SHALL BE RESPONSIBLE FOR PAYMENT ONLY IF THE RECEIPTS ARE SUBMITTED WITHIN 90 CALENDAR DAYS OF THE DATE THE TAX PAYMENT IS DUE. IF NO FULL TAX ASSESSMENT IS MADE DURING THE CALENDAR YEAR IN WHICH THE GOVERNMENT LEASE COMMENCES, THE BASE YEAR WILL BE THE FIRST YEAR OF A FULL ASSESSMENT.~~

(B) ~~RENTABLE~~ THE GOVERNMENT'S SHARE OF THE TAX INCREASE WILL BE BASED ON THE RATIO OF THE SQUARE FEET OCCUPIED BY THE GOVERNMENT TO THE TOTAL RENTABLE SQUARE FEET IN THE BUILDING. IF THE GOVERNMENT'S LEASE TERMINATES BEFORE THE END OF A CALENDAR YEAR, PAYMENT WILL BE BASED ON THE PERCENTAGE OF THE YEAR IN WHICH THE GOVERNMENT OCCUPIED SPACE. THE PAYMENT WILL NOT INCLUDE PENALTIES FOR NON-PAYMENT OR DELAY IN PAYMENT. IF THERE IS ANY VARIANCE BETWEEN THE ASSESSED VALUE OF THE GOVERNMENT'S SPACE AND OTHER SPACE IN THE BUILDING, THE GOVERNMENT MAY ADJUST THE BASIS FOR DETERMINING ITS SHARE OF THE TAX INCREASE.

(C) THE GOVERNMENT MAY CONTEST THE TAX ASSESSMENT BY INITIATING LEGAL PROCEEDINGS ON BEHALF OF THE GOVERNMENT AND THE LESSOR OR THE GOVERNMENT ALONE. IF THE GOVERNMENT IS PRECLUDED FROM TAKING LEGAL ACTION, THE LESSOR SHALL CONTEST THE ASSESSMENT UPON REASONABLE NOTICE BY THE GOVERNMENT. THE GOVERNMENT SHALL REIMBURSE THE LESSOR FOR ALL COSTS AND SHALL EXECUTE ALL DOCUMENTS REQUIRED FOR THE LEGAL PROCEEDINGS. THE LESSOR SHALL AGREE WITH THE ACCURACY OF THE DOCUMENTS. THE GOVERNMENT SHALL RECEIVE ITS SHARE OF ANY TAX REFUND. IF THE GOVERNMENT ELECTS TO CONTEST THE TAX ASSESSMENT, PAYMENT OF THE ADJUSTED RENT SHALL BECOME DUE ON THE FIRST WORKDAY OF THE MONTH FOLLOWING CONCLUSION OF THE APPEAL PROCEEDINGS. The Government will contest taxes only in the event that the lessor has not.

(D) IN THE EVENT OF ANY DECREASES IN REAL ESTATE TAXES OCCURRING DURING THE TERM OF OCCUPANCY UNDER THE LEASE, THE RENTAL AMOUNT WILL BE REDUCED ACCORDINGLY. THE AMOUNT OF ANY SUCH REDUCTIONS WILL BE DETERMINED IN THE SAME MANNER AS INCREASES IN RENT PROVIDED UNDER THIS CLAUSE.

THE PERCENT OF THE BUILDING OCCUPIED BY THE GOVERNMENT, FOR PURPOSES OF TAX ADJUSTMENTS, hereby established as .5 ~~5~~ %.

(A) BEGINNING WITH THE SECOND YEAR OF THE LEASE AND EACH YEAR AFTER, THE GOVERNMENT SHALL PAY ADJUSTED RENT FOR CHANGES IN COSTS FOR CLEANING SERVICES, SUPPLIES, MATERIALS, MAINTENANCE, TRASH REMOVAL, LAUNDRY, WATER, SEWER CHARGES, HEATING, ELECTRICITY, AND CERTAIN ADMINISTRATIVE EXPENSES ATTRIBUTABLE TO OCCUPANCY. APPLICABLE COSTS LISTED ON GSA FORM 1217, LESSOR'S ANNUAL COST STATEMENT, WHEN NEGOTIATED AND AGREED UPON, WILL BE USED TO DETERMINE THE BASE RATE FOR OPERATING COSTS ADJUSTMENT.

(B) THE AMOUNT OF ADJUSTMENT WILL BE DETERMINED BY MULTIPLYING THE BASE RATE BY THE PERCENT OF CHANGE IN THE COST OF LIVING INDEX. THE PERCENT CHANGE WILL BE COMPUTED BY COMPARING THE INDEX FIGURE PUBLISHED FOR THE MONTH PRIOR TO THE LEASE COMMENCEMENT DATE WITH THE INDEX FIGURE PUBLISHED FOR THE MONTH WHICH BEGINS EACH SUCCESSIVE 12-MONTH PERIOD. FOR EXAMPLE, A LEASE WHICH COMMENCES IN JUNE OF 1985 WOULD USE THE INDEX PUBLISHED FOR MAY OF 1985 AND THAT FIGURE WOULD BE COMPARED WITH THE INDEX PUBLISHED FOR MAY OF 1986, MAY OF 1987, AND SO ON, TO DETERMINE THE PERCENT CHANGE. THE COST OF LIVING INDEX WILL BE MEASURED BY THE U.S. DEPARTMENT OF LABOR REVISED CONSUMER PRICE INDEX FOR WAGE EARNERS AND CLERICAL WORKERS, U.S. CITY AVERAGE, ALL ITEMS FIGURE, (1982-84 = 100) PUBLISHED BY THE BUREAU OF LABOR STATISTICS. PAYMENT WILL BE MADE WITH THE MONTHLY INSTALLMENT OF FIXED RENT. RENTAL ADJUSTMENTS WILL BE EFFECTIVE ON THE ANNIVERSARY DATE OF THE LEASE. PAYMENT OF THE ADJUSTED RENTAL RATE WILL BECOME DUE ON THE FIRST WORKDAY OF THE SECOND MONTH FOLLOWING THE PUBLICATION OF THE COST OF LIVING INDEX FOR THE MONTH PRIOR TO THE LEASE COMMENCEMENT DATE.

(C) IF THE GOVERNMENT EXERCISES AN OPTION TO EXTEND THE LEASE TERM AT THE SAME RATE AS THAT OF THE ORIGINAL TERM, THE OPTION PRICE WILL BE BASED ON THE ADJUSTMENT DURING THE ORIGINAL TERM. ANNUAL ADJUSTMENTS WILL CONTINUE.

(D) IN THE EVENT OF ANY DECREASES IN THE COST OF LIVING INDEX OCCURRING DURING THE TERM OF THE OCCUPANCY UNDER THE LEASE, THE RENTAL AMOUNT WILL BE REDUCED ACCORDINGLY. THE AMOUNT OF SUCH REDUCTIONS WILL BE DETERMINED IN THE SAME MANNER AS INCREASES IN RENT PROVIDED UNDER THIS CLAUSE.

(E) THE OFFER MUST CLEARLY STATE WHETHER THE RENTAL IS FIRM THROUGHOUT THE TERM OF THE LEASE OR IF IT IS SUBJECT TO ANNUAL ADJUSTMENT OF OPERATING COSTS AS INDICATED ABOVE. IF OPERATING COSTS WILL BE SUBJECT TO ADJUSTMENT, IT SHOULD BE SPECIFIED ON BLOCK 19 OF GSA FORM 1364, PROPOSAL TO LEASE SPACE, CONTAINED ELSEWHERE IN THIS SOLICITATION.

For purposes of operating cost escalations, the base for the operating costs adjustment is hereby established as \$9.12 per NUSF or \$38,449.92 per annum for the Government occupied space. INITIALS: 1 CD
LESSOR GOVERNMENT

(1) TAX ADJUSTMENT GSAR
552.270-24 (6/85)

(2) PERCENTAGE OF OCCUPANCY

(3) OPERATING COSTS GSAR
552.270-23 (6/85)

(4) OPERATING COSTS BASE

WILL PAY A SQUARE FOOT RATE. IT IS DETERMINED AS FOLLOWS:

IF THE SPACE IS ON A SINGLE TENANCY FLOOR, COMPUTE THE INSIDE GROSS AREA BY MEASURING BETWEEN THE INSIDE FINISH OF THE PERMANENT EXTERIOR BUILDING WALLS FROM THE FACE OF THE CONVECTORS (PIPES OR OTHER WALL-HUNG FIXTURES) IF THE CONVECTOR OCCUPIES AT LEAST 50 PERCENT OF THE LENGTH OF EXTERIOR WALLS.

IF THE SPACE IS ON A MULTIPLE TENANCY FLOOR, MEASURE FROM THE EXTERIOR BUILDING WALLS AS ABOVE AND TO THE ROOM SIDE FINISH OF THE FIXED CORRIDOR AND SHAFT WALLS AND/OR THE CENTER OF TENANT-SEPARATING PARTITIONS.

IN ALL MEASUREMENTS, MAKE NO DEDUCTIONS FOR COLUMNS AND PROJECTIONS ENCLOSING THE STRUCTURAL ELEMENTS OF THE BUILDING AND DEDUCT THE FOLLOWING FROM THE GROSS AREA INCLUDING THEIR ENCLOSING WALLS:

TOILETS AND LOUNGES,
STAIRWELLS,
ELEVATORS AND ESCALATOR SHAFTS,
BUILDING EQUIPMENT AND SERVICE AREAS,
ENTRANCE AND ELEVATOR LOBBIES,
STACKS AND SHAFTS, AND
CORRIDORS IN PLACE OR REQUIRED BY LOCAL CODES AND ORDINANCES.

UNLESS OTHERWISE NOTED, ALL REFERENCES IN THIS SOLICITATION TO SQUARE FEET

CONSTRUCTION INSPECTIONS WILL BE MADE PERIODICALLY BY THE CONTRACTING OFFICER AND/OR DESIGNATED TECHNICAL REPRESENTATIVES TO REVIEW COMPLIANCE WITH THE SOLICITATION REQUIREMENTS AND THE FINAL WORKING DRAWINGS.

(B) PERIODIC REVIEWS, TESTS, AND INSPECTIONS BY THE GOVERNMENT ARE NOT TO BE INTERPRETED AS RESULTING IN ANY APPROVAL OF THE LESSOR'S APPARENT PROGRESS TOWARD MEETING THE GOVERNMENT'S OBJECTIVES, BUT ARE INTENDED TO DISCOVER ANY INFORMATION WHICH THE CONTRACTING OFFICER MAY BE ABLE TO CALL TO THE LESSOR'S ATTENTION TO PREVENT COSTLY MISDIRECTION OF EFFORT. THE LESSOR WILL REMAIN COMPLETELY RESPONSIBLE FOR DESIGNING, CONSTRUCTING, OPERATING, AND MAINTAINING THE BUILDING IN FULL ACCORDANCE WITH THE

IN CASE OF FAILURE ON THE PART OF THE LESSOR TO COMPLETE THE WORK WITHIN THE TIME FIXED IN THE LEASE CONTRACT OR LETTER OF AWARD, THE LESSOR SHALL PAY THE GOVERNMENT AS FIXED AND AGREED LIQUIDATED DAMAGES, PURSUANT TO THIS CLAUSE, THE SUM OF \$185.00 FOR EACH AND EVERY CALENDAR DAY THAT THE DELIVERY IS DELAYED BEYOND THE DATE SPECIFIED FOR DELIVERY OF ALL THE SPACE READY FOR OCCUPANCY BY THE GOVERNMENT.

IF THE GOVERNMENT FAILS TO OCCUPY ANY PORTION OF THE LEASED PREMISES OR VACATES THE PREMISES IN WHOLE OR IN PART PRIOR TO EXPIRATION OF THE FIRM TERM OF THE LEASE, THE RENTAL RATE SHALL BE REDUCED AS FOLLOWS:

THE RATE SHALL BE REDUCED BY THAT PORTION OF THE COSTS PER SQUARE FOOT OF OPERATING EXPENSES NOT REQUIRED TO MAINTAIN THE SPACE. SAID REDUCTION SHALL OCCUR AFTER THE GOVERNMENT GIVES 30 DAYS PRIOR NOTICE TO THE LESSOR, AND SHALL CONTINUE IN EFFECT UNTIL THE GOVERNMENT OCCUPIES THE PREMISES OR THE LEASE EXPIRES OR IS TERMINATED. Only if there is a savings to the Lessor due to the reduction of space will the Government assume a savings which will be of equal value to that of the Lessor's savings.

INITIALS: 1 : CD
LESSOR : GOVERNMENT

WINDOWS. ALL EXTERIOR WINDOWS SHALL BE EQUIPPED WITH WINDOW BLINDS OR DRAPERIES CONSTRUCTED FROM FLAME RETARDANT FABRIC.

ASBESTOS FLOOR TILE SHALL NOT BE USED FOR NEW INSTALLATION. EXISTING FLOOR AND/OR CEILING COVERING MAY BE ACCEPTED, PROVIDED THEY ARE IN GOOD CONDITION. IF ACCEPTED BY THE CONTRACTING OFFICER, THESE ITEMS

DOORS SHALL BE WEATHER TIGHT, EQUIPPED WITH INSULATED CLOSERS AND OPEN OUTWARD. ALL DOORS LEADING TO LEASED SPACE MUST BE EQUIPPED WITH 5 PIN TUMBLER LOCKS AND DOOR CHECKS. THE LOCKS MUST BE MASTER KEYED. THE GOVERNMENT SHALL BE FURNISHED AT LEAST TWO MASTER KEYS AND TWO KEYS FOR EACH LOCK. DOORS MUST HAVE MATCHING HARDWARE STOPS.

LESSOR SHALL CONSTRUCT 2222.7777 LINEAR FEET OF FINISHED AND PAINTED CEILING-HIGH PARTITIONING WHICH INCLUDES INTERIOR DOORS. THESE PARTITIONS SHALL HAVE SOUND-TRANSMISSION PROPERTIES. DEMOLITION OF EXISTING IMPROVEMENTS NECESSARY TO SATISFY THE GOVERNMENT'S LAYOUT SHALL BE DONE AT

PRIOR TO OCCUPANCY ALL SURFACES DESIGNATED BY GSA FOR PAINTING MUST BE NEWLY PAINTED IN COLORS ACCEPTABLE TO GSA. ALL PAINTED SURFACES, INCLUDING ANY PARTITIONING INSTALLED BY THE GOVERNMENT OR LESSOR AFTER GOVERNMENT OCCUPANCY, MUST BE REPAINTED AFTER WORKING HOURS AT LESSOR EXPENSE AT LEAST EVERY 5 YEARS. THIS INCLUDES MOVING AND RETURN OF FURNITURE. PUBLIC AREAS MUST BE PAINTED AT LEAST EVERY 3 YEARS.

APPROXIMATELY 100 PERCENT OF THE SPACE SHALL BE CARPETED WITH BROADLOOM CARPET.

ANY CARPET TO BE NEWLY INSTALLED MUST MEET THE FOLLOWING SPECIFICATIONS:

- PILE YARN CONTENT: STAPLE FILAMENT OR CONTINUOUS FILAMENT BRANDED BY A FIBER PRODUCER (ALLIED, DUPONT, MONSANTO, BASF, WOOLBLEND), SOIL-RIDING NYLON OR WOOL NYLON BLENDS.
- CARPET PILE CONSTRUCTION: LEVEL LOOP, TEXTURED LOOP, LEVEL CUT PILE; OR LEVEL CUT/UNCUT PILE.
- PILE WEIGHT: 26 OUNCES PER SQUARE YARD IS THE MINIMUM FOR LEVEL-LOOP OR TEXTURED-LOOP CONSTRUCTION. 32 OUNCES PER SQUARE YARD IS THE MINIMUM FOR LEVEL-CUT/UNCUT CONSTRUCTION.
- SECONDARY BACK: JUTE OR SYNTHETIC FIBER FOR GLUE-DOWN INSTALLATION.
- DENSITY: 100 PERCENT NYLON (LOOP AND CUT PILE) — MINIMUM OF 4000; OTHER FIBERS, INCLUDING BLENDS AND COMBINATIONS — MINIMUM OF 4500.
- CARPET CONSTRUCTION: MINIMUM OF 64 TUFTS PER SQUARE INCH.
- STATIC BUILDUP: MAXIMUM OF 3.5 KV, WHEN TESTED IN ACCORDANCE WITH AATCC-134.

* The offeror shall provide the Government a minimum of five (5) color samples. The sample and color must be approved by GSA prior to installation. No substitutes may be made by the offeror after sample selection.

INITIALS: 7 LESSOR CD GOVERNMENT

GSA PUBLIC BUILDINGS SERVICE

(7) WINDOW

(8) PARTITIONING

(8) PAINTING

(9) CARPET: BROADLOOM (9/91)

THE LESSOR SHALL PROVIDE AND OPERATE ALL BUILDING EQUIPMENT AND SYSTEMS IN ACCORDANCE WITH APPLICABLE TECHNICAL PUBLICATIONS, MANUALS, AND STANDARD PROCEDURES. MAINS, LINES, AND METERS FOR UTILITIES SHALL BE PROVIDED BY THE LESSOR. EXPOSED DUCTS, PIPING, AND CONDUITS ARE NOT PERMITTED IN OFFICE SPACE.

SEPARATE TOILET FACILITIES FOR MEN AND WOMEN SHALL BE PROVIDED ON EACH FLOOR WHERE THE GOVERNMENT LEASES SPACE. WATER CLOSETS AND URINALS SHALL NOT BE VISIBLE WHEN THE EXTERIOR DOOR IS OPEN. EACH TOILET ROOM SHALL CONTAIN TOILET PAPER DISPENSERS, SOAP DISPENSERS, PAPER TOWEL DISPENSERS, WASTE RECEPTACLES, A COIN OPERATED SANITARY NAPKIN DISPENSER WITH RECEPTACLE FOR EACH WOMEN'S TOILET, DISPOSABLE TOILET SEAT COVER DISPENSERS, A CONVENIENCE OUTLET, AND HOT AND COLD WATER. (THE GOVERNMENT WILL ADVISE DURING NEGOTIATIONS IF ADDITIONAL FACILITIES ARE REQUIRED.)

HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS ARE REQUIRED WHICH MAINTAIN A TEMPERATURE RANGE OF 65-70 DEGREES FAHRENHEIT DURING THE HEATING SEASON AND A RANGE OF 76-80 DEGREES FAHRENHEIT DURING THE COOLING SEASON. TEMPERATURES IN THE ZONE BETWEEN 65 AND 80 DEGREES ARE PERMISSIBLE AS LONG AS HEATING SYSTEMS ARE NOT OPERATED TO MAINTAIN TEMPERATURES ABOVE 70 DEGREES, AND COOLING SYSTEMS ARE NOT OPERATED TO ACHIEVE TEMPERATURES BELOW 76 DEGREES. THESE TEMPERATURES MUST BE MAINTAINED THROUGHOUT THE LEASED PREMISES AND SERVICE AREAS, REGARDLESS OF OUTSIDE TEMPERATURES, DURING HOURS OF OPERATION SPECIFIED HEREIN.

LOCAL CODES AND ORDINANCES. WHEN CODES CONFLICT, THE MOST STRINGENT STANDARD SHALL APPLY. MAIN SERVICE ENCLOSURE SHALL BE ENCLOSED. THE ENCLOSURE MAY NOT BE USED FOR ANY OTHER PURPOSES AND SHALL HAVE DOOR(S) FITTED WITH AN AUTOMATIC DEADLOCKING LATCH BOLT WITH A MINIMUM THROW OF 1/2 INCH. DISTRIBUTION PANELS MUST BE CIRCUIT BREAKER TYPE WITH

SQUARE FEET. CONVENIENCE OUTLETS SHALL BE INSTALLED ON THE BASIS OF A MAXIMUM OF EIGHT (8) OUTLETS PER 20-AMP CIRCUIT.

EACH WORKSTATION SHALL CONTAIN AT LEAST ONE (1) ORANGE-RED OR OTHER SPECIALLY DESIGNED RECEPTACLE WITH ISOLATED-GROUND CAPABILITY. SUCH RECEPTACLES SHALL NOT EXCEED IN NUMBER FOUR (4) PER 20-AMP CIRCUIT, AND SHALL BE INSTALLED IN ACCORDANCE WITH THE 1975 EDITION OF FEDERAL INFORMATION PROCESSING STANDARDS PUB. 94.

THE LESSOR SHALL ENSURE THAT ELECTRICAL OUTLETS AND ASSOCIATED WIRING ARE CONCEALED BY A METHOD ACCEPTABLE TO THE CONTRACTING OFFICER. RACEWAYS AND OUTLETS SHALL BE CONCEALED EXCEPT WHEN SURFACE-MOUNTING IS APPROVED BY THE CONTRACTING OFFICER.

AT THE DISCRETION OF THE CONTRACTING OFFICER, STAND-ALONE POWER POLES (OR, IN THE CASE OF SYSTEM FURNITURE, SYSTEMS-FURNITURE POWER POLES) MAY BE USED TO PROVIDE ELECTRICAL SERVICE TO WORK STATIONS.

ALL FLOORS SHALL HAVE 120/208-VOLT, 3-PHASE, 4-WIRE WITH BOND, 60-HERTZ ELECTRICAL SERVICE AVAILABLE. DUPLEX OUTLETS SHALL BE CIRCUITED SEPARATELY FROM THE LIGHTING. ALL BRANCH-CIRCUIT WIRING SHALL CONSIST OF COPPER CONDUCTORS. CONDUCTORS FOR BRANCH CIRCUITS SHALL BE SIZED TO

PER 77777 SQUARE FEET. THE LESSOR SHALL ENSURE THAT ALL OUTLETS AND ASSOCIATED WIRING USED TO TRANSMIT TELECOMMUNICATION (VOICE) SERVICE TO THE WORKSTATION WILL BE SAFELY CONCEALED IN FLOOR DUCTS, WALLS, OR COLUMNS. WALL OUTLETS SHALL BE PROVIDED WITH RINGS AND PULL STRINGS TO FACILITATE THE INSTALLATION OF CABLE.

THE GOVERNMENT RESERVES THE RIGHT TO PROVIDE ITS OWN TELECOMMUNICATION (VOICE) SERVICE IN THE SPACE TO BE LEASED. THE GOVERNMENT MAY CONTRACT WITH ANOTHER PARTY TO HAVE INSIDE WIRING AND TELEPHONE EQUIPMENT INSTALLED. TELECOMMUNICATION SWITCHROOMS, WIRE CLOSETS, AND RELATED SPACES SHALL BE ENCLOSED. THE ENCLOSURE SHALL NOT BE USED FOR STORAGE OR OTHER PURPOSES AND SHALL HAVE DOOR(S) FITTED WITH AN AUTOMATIC DEADLOCKING LATCH BOLT WITH A MINIMUM THROW OF 1/2 INCH.

FOR WALL OUTLETS SHALL BE PROVIDED ON THE BASIS OF ONE (1) PER

INITIALS: 7 : CD
LESSOR GOVERNMENT

SPACE OFFERED MUST HAVE A CURRENT OCCUPANCY PERMIT ISSUED BY THE LOCAL JURISDICTION. EQUIPMENT, SERVICES, OR UTILITIES FURNISHED AND ACTIVITIES OF OTHER OCCUPANTS SHALL BE FREE OF SAFETY, HEALTH, AND FIRE HAZARDS. WHEN HAZARDS ARE DETECTED, THEY MUST BE PROMPTLY CORRECTED AT THE LESSOR'S EXPENSE.

THE LEASED SPACE SHALL BE FREE OF ALL ASBESTOS CONTAINING MATERIALS, EXCEPT UNDAMAGED VINYL ASBESTOS FLOOR TILE IN THE SPACE OR UNDAMAGED BOILER OR PIPE INSULATION OUTSIDE THE SPACE.

(13) CODE VIOLATIONS (9/91)

(14) ASBESTOS (9/91)-

INITIALS: 1 : CD
LESSOR GOVERNMENT

GOVERNMENT

SPEED:

THE PASSENGER ELEVATORS MUST HAVE A CAPACITY TO TRANSPORT IN 5 MINUTES 15 PERCENT OF THE NORMAL POPULATION OF ALL UPPER FLOORS (BASED ON 125 SQUARE FEET PER PERSON). FURTHER, THE DISPATCH INTERVAL BETWEEN ELEVATORS DURING THE UP-PEAK DEMAND PERIOD SHOULD NOT EXCEED 35 SECONDS.

INITIALS: 1 : cd
LESSOR GOVERNMENT

GSA PUBLIC BUILDINGS SERVICE

~~UNAUTHORIZED ENTRY TO THE SPACE LEASED DURING NON-LEASING HOURS OR DURING
LOITERING OR DISRUPTIVE ACTS AROUND THE SPACE LEASED DURING DUTY~~

CLEANING IS TO BE PERFORMED ^{during} ~~AT~~ TENANT WORKING HOURS UNLESS ~~SANITARY~~
~~CLEANING IS SPECIFIED AS A SPECIAL REQUIREMENT IN THIS~~
~~AGREEMENT~~ See Attachment II

(17) JANITORIAL SERVICES

THE LESSOR SHALL MAINTAIN THE LEASED PREMISES, INCLUDING OUTSIDE AREAS IN A CLEAN CONDITION AND SHALL PROVIDE SUPPLIES AND EQUIPMENT. THE FOLLOWING SCHEDULE DESCRIBES THE LEVEL OF SERVICES INTENDED. PERFORMANCE WILL BE BASED ON THE CONTRACTING OFFICER'S EVALUATION OF RESULTS, NOT THE FREQUENCY OR METHOD OF PERFORMANCE.

GENERAL CLEANING

DAILY:

General Offices:

1. All hard-surfaced flooring to be swept using approved dustdown preparation.
2. Carpet sweep all carpets, moving only light furniture (desks, file cabinets, etc. not to be moved).
3. Hand dust and wipe clean all furniture, fixtures and window sills.
4. Empty and clean all ash trays and screen all sand urns.
5. Empty all waste receptacles and remove wastepaper.
6. Dust interiors of all waste disposal cans and baskets.
7. Wash clean all water fountains and coolers.
8. Sweep all private stairways

Lavatories:

1. Sweep and wash all floors, using proper disinfectants
2. Wash and polish all mirrors, shelves, bright work and enameled surfaces.
3. Wash and disinfect all basins, bowls and urinals.
4. Wash all toilet seats.

INITIALS: 1 : CD

LESSOR

GOVERNMENT

5. Hand dust and clean all partitions, tile walls, dispensers and receptacles in lavatories and restrooms.
6. Empty paper receptacles and remove waste-paper.
7. Fill toilet tissue holders.
8. Empty and clean sanitary disposal receptacles.

WEEKLY

1. Vacuum clean all carpeting and rugs.
2. Dust all door louvres and other ventilating louvres within a person's reach.
3. Wipe clean all brass and other bright work.

MONTHLY

High dust premises complete including the following:

1. Dust all pictures, frames, charts, graphs and similar wall hangings not reached in nightly cleaning.
2. Dust clean all vertical surfaces, such as walls, partitions, doors, bucks and other surfaces not reached in nightly cleaning.
3. Dust all pipes, ventilating and air-conditioning louvres, ducts, high mouldings and other high areas not reached in nightly cleaning.
4. Dust all venetian blinds.

PERIODICALLY

Wash all windows no fewer than two times annually.

AS REQUIRED:

BUILDING
PROPERLY MAINTAIN PLANTS AND LAWNS, REMOVE SNOW AND ICE FROM ENTRANCES, EXTERIOR WALKS AND PARKING LOTS OF THE BUILDING. PROVIDE INITIAL SUPPLY, INSTALLATION AND REPLACEMENT OF LIGHT BULBS, TUBES, BALLASTS AND STARTERS. REPLACE WORN FLOOR COVERINGS (THIS INCLUDES MOVING AND RETURN OF FURNITURE). EXTERMINATE PESTS.

INITIALS:

LESSOR

GOVERNMENT

GSA PUBLIC BUILDINGS SERVICE

GENERAL CLAUSES

(Acquisition of Leasehold Interests in Real Property Over \$25,000 and Less Than 10,000 Square Feet or Any Lease Not To Exceed 6 Months)

The Government reserves the right, at any time after the lease is signed and during the term of the lease, to inspect the leased premises and all other areas of the building access to which is necessary to ensure a safe and healthy work environment for the Government tenants and the Lessor's performance under this lease.

2. If the building is ^{reasonably} partially or totally destroyed or damaged by fire or other casualty so that the leased space is untenable as determined by the Government, the Government may terminate the lease upon 15 calendar days written notice to the Lessor and no further rental will be due.
3. The Lessor shall maintain the demised premises, including the building and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease, in good repair and tenantable condition.
4. In the event the Lessor fails to perform any service, to provide any item, or meet any requirement of this lease, the Government may perform the service, provide the item, or meet the requirement, either directly or through a contract. The Government may deduct any costs incurred for the service or item, including administrative costs, from the rental payments after reasonable notice is given to the Lessor to cure the deficiency.
5. This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).
6. 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)

This contract incorporates one or more clauses by reference with the same force and effect as if they were given in full text. Upon request the Contracting Officer will make their full text available.

7. The following clauses and provisions are incorporated by reference:

- FAR 52.203-1 OFFICIALS NOT TO BENEFIT (APR 1984)
- GSAR 552-203-5 COVENANT AGAINST CONTINGENT FEES (FEB 1990)
- FAR 52.203-7 ANTI-KICKBACK PROCEDURES (OCT 1988)
- GSAR 552-203-72 REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY (NOV 1990)
(Applies to leases over \$100,000)
- GSAR 552-203-73 PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1990)
(Applies to leases over \$25,000)
- FAR 52.215-1 EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (APR 1984)
(Applies to leases over \$10,000)
- FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FEB 1990) (Applies to leases over \$25,000)
- FAR 52.219-9 SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (JAN 1991) (Applies to leases over \$500,000)
- FAR 52.219-16 LIQUIDATED DAMAGES - SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1989)
(Applies to leases over \$500,000)
- FAR 52.222-26 EQUAL OPPORTUNITY (APR 1984) (Applies to leases over \$10,000)
- FAR 52.222-35 AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (APR 1984) (Applies to leases over \$10,000)

INITIALS: 1 & CD
Lessor Government

RIDER TO THE LEASE GS-02B-91577

7. The Lessor hereby agrees to proceed with due diligence to provide the following alterations and installations as part of the rental consideration, in accordance with the floor plan, Exhibit "A", Supplemental Lease Requirements, and Attachment #1 attached hereto and made a part thereof:
- a) Paint all surfaces in a color to be selected by the Government in accordance with Attachment #1;
 - b) Provide and install telephone outlets and electrical outlets as specified in "Supplemental Lease Requirements for Small and Temporary Leases", at locations specified on the floor plan, Exhibit "A",
 - (c) Provide and install ceiling-high partitioning as specified in "Supplemental Lease Requirements for Small and Temporary Leases" at locations specified on the floor plan, Exhibit "A",
 - (d) Provide and install carpet throughout entire office space in accordance with Attachment #1,
 - (e) Slab-to-slab partitioning shall be provided and installed along the perimeter of the Government's leased space in accordance with the attached floorplan, Exhibit "A",
 - (f) Provide and install door hardware as specified in "Supplemental Lease Requirements for Small and Temporary Leases" at locations specified on the floor plan, Exhibit "A",
 - (g) Repair and replace existing cracked or stained ceiling tiles to a new or like-new condition;
 - (h) Clean all fluorescent light fixtures;
 - (i) Provide and install vinyl baseboard molding. Three color choices are to be presented by the Lessor, one of which will be selected by the Government
8. The following paragraphs were deleted in part or modified in part: In Attachment #1: partial page 2' page 3 Paragraph 7; partial page 4; partial page 6; partial 8, Paragraph 17.

9. The Lessor hereby agrees to deliver this space ready for occupancy within ~~180~~ ⁹⁰ days from the execution of this Lease. The Lessor shall give the Government at least five (5) business days notice of the anticipated completion of all alterations whereupon the Government shall have five (5) business days to inspect the leased premises and accept the space as satisfactorily completed.
10. This term of this Lease shall commence upon completion of the alteration and installations as specified in Paragraphs 7 and 9 of the Rider the Supplemental Lease Requirements and Attachment #1 to this Lease. The commencement date shall be set by a Supplemental Lease Agreement and shall run for a period of ten years thereafter.
11. The Government may terminate this Lease at any time after the fifth year by giving 180 days notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the day of mailing.
12. Space to be leased to the Government must contain the required net usable square footage specified in paragraph 2(b) of this Lease. Rental payment will be made on the basis of multiplying the net usable square footage actually delivered by the rate of \$ 46.96 per net usable square foot, but in no event will the Government pay for more than 4400 net usable square feet.
13. If the Government requires heating or air-conditioning beyond the normal hours of operation set forth in Block 6(E) of this Lease, the cost per hour of overtime heating would be ~~\$50.00~~ ^{\$22.00} and the cost per hour of overtime air-conditioning would be ~~\$50.00~~ ^{\$40.00}.
14. Cleaning services which require access to the Government's leased premises shall be accomplished during the working hours of 9:00 AM to 6:00 PM, Mondays through Fridays except Federal Holidays, only when occupied by tenant agency personnel.
- ~~15. If during the term of this Lease including extensions, title to this property is transferred to another party either by sale, foreclosure, condemnation or other transaction, the Lessor (transferor) shall promptly notify the Contracting Officer of said transfer. The following information shall accompany this notification:~~
- ~~a. A certified copy of the deed transferring the title to the property from the Lessor to the new owner;~~
 - ~~b. A letter from the new owner assuming, approving, and agreeing to be bound by the terms of this lease;~~

~~c. A letter from the Lessor waiving all rights under this Lease against the Government up to the effective date of the transfer;~~

~~d. The new owner's full legal name. If a corporation, indicate these state of incorporation. In a general partnership, list all general partners fully. If a limited partnership, list all general partners and identify under the laws of which the limited partnership is created. If a realty trust, give names of all trustees and recording dates of trust.~~

The foregoing information must be received by the fifteenth day of the month in which the transfer of title will be effected. The rent for that month, adjusted in accordance with the effective date of transfer, will be processed to the Lessor.

Initial rental payment, including the applicable portion of rent for the month during which the transfer occurred, to the new owner will be processed on the first day of the second month following the transfer of title.

If the notification of transfer and related information is not received until the sixteenth day of the month (or later), in which the transfer of title will be effected, the full contract rental for that month will be forwarded to the Lessor.

In this instance, it will be the responsibility of both the Lessor and the new owner to submit, in conjunction with the other requested information, a letter of agreement regarding disposition of the monthly rent with respect to the effective date of transfer.

~~In any instance, failure to submit the documentation required for transfer of title will result in a stop payment of rent until such time as all documentation is received by the Contracting Officer.~~

16. The Lessor shall not be reimbursed for any services not provided for in this Lease including, but not limited to, repairs and alterations, nor will any rental be paid for occupancy in whole or in part except for the Lease term specified in this Lease, unless approved in advance and in writing by an authorized official of the General Services Administration.

17. Each employee of the Lessor and/or its Contractor(s) shall be (1) a citizen of the United States of America; (2) an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card, Form I-151p; or (3) an alien who presents other evidence from the Immigration and Naturalization Service that employment will not affect his/her immigration status. The Government acknowledges that one or more of the limited partners of the ownership of 666 Fifth Avenue do not reside in the USA.
18. The Lessor shall not enter into negotiations concerning the space leased or to be leased with representations of Federal agencies other than the officers and employees of the General Services Administration or personnel authorized by the Contracting Officer.
19. As part of the rental consideration, the Lessor shall furnish and install a cabinet and sink with hot and cold running water. The counter shall be 5' long, 33" deep with a formica top having a 3" backsplash. The sink shall be single basin stainless steel, 22" front to back and 7" deep. The cabinet should have a variety of drawers and storage space.
20. The Lessor maintains the right to alter the configuration of up to 30% of the space occupied by the Government. Should the space be reconfigured, the Government will retain an equal or greater amount of windows. The decision to alter the configuration of Government space is limited to the time frame between July 1, 1993 and January 31, 1994. Should no decision with a reasonably definitive plan to reconfigure the space during this period be made, then the Lessor foregoes his right. The actual construction activity is not limited to this timeframe. All expenses incurred due to the reconfiguration of the space must be the sole responsibility of the Lessor. Any alterations made must be of equal or superior quality to that which exists. All work performed must be reasonably approved by the General Services Administration prior to work commencement. However, in no event will the Government occupy less than 4216 contiguous net usable square feet.

21. If after the Lease expiration, the Government shall retain possession of the premises, the Lease shall continue in force and effort on a day-to-day basis not to exceed 90 days and rent shall be paid on a prorated basis at the rate provided therein.
22. The space to be occupied by the Government shall be used as General Office and Conference Room space for the U.S. Information Agency. In the event that this agency vacates the area, the Government reserves the right to substitute occupancy with a "like" agency.
23. **LIMITATION OF LIABILITY**
The Government agrees to look solely to the assets of the Lessor in the building 666 Fifth Avenue for the satisfaction of any right of the Government or the collection of a judgement (or other Judicial process) requiring the payment of money by Lessor in the event of any liability by Lessor, and no property or assets of the partners of Lessor shall be subject to levy, execution, attachment, or other enforcement procedure for the satisfaction of the Government's remedies under or with respect to this Lease, the relationship of landlord and tenant hereunder, the Government's use and occupancy of the premises, or any other liability of Lessor to the Government: provided, however;
- The foregoing limitation of liability shall not be effective with respect to Lessor's obligation to complete the premises in accordance with Paragraph No. 9 of the Rider but shall become effective with respect to such obligation as of the date the Government accepts the premises as satisfactorily completed.
24. Bathrooms on the Government occupied floor must comply with all handicap accessibility requirements within six months of lease execution.
25. This Lease is subject to all ground and underlying leases and each and every mortgage (collectively the "mortgages") which may now or hereafter affect such leases on the building or the land thereunder (the "Land") and to such leases or all renewals extensions, supplements, amendments, modifications, consolidations, and replacements thereof or hereto, substitutions therefore, and advances made thereunder. If the holders of the leases and any such mortgages shall succeed to the right of the Lessor, the Government shall attorn to such holders of the leases or such mortgages a subordination and such ownership upon receipt of a Non-Disturbance Agreement which is satisfactory to the Government. Nothing herein shall be construed as a waiver of any rights the Government has as a sovereign.
26. The Government will not take any actions that cause the Lessor to violate any local laws or codes.

SUPPLEMENTAL LEASE REQUIREMENTS FOR SMALL AND TEMPORARY LEASES

1. NET USABLE SPACE

Net usable space is the method of measurement for the area for which GSA will pay a square foot rate. Net usable space is determined as follows:

a. If the space is on a single tenancy floor, compute the inside gross area by measuring between the inside finish of the permanent exterior building walls from the face of the convectors (pipes or other wall hung fixtures) if the convector occupies at least 50 percent of the length of exterior walls.

b. If the space is on a multiple tenancy floor, measure from the exterior building walls as above and to the room side finish of the fixed corridor and shaft walls and/or the center of tenant-separating partitions.

c. In all measurements, make no deductions for columns and projections enclosing the structural elements of the building and deduct the following from the gross area including their enclosing walls:

Toilets and lounges,
Stairwells,
Elevators and escalator shafts,
Building equipment and service areas,
Entrance and elevator lobbies,
Stacks and shafts, and
Permanent corridors (Structural elements),
Corridors in place or corridors required by local codes and ordinances.

d. Unless otherwise noted, all references in this lease to square feet means net usable square feet.

2. UNIT COST FOR ADJUSTMENTS

a. Several paragraphs in this package specify means for determining quantities of items such as electrical outlets and partitions. These are Government projections to assist the offeror in developing an annual price for the space offered. Actual quantities may not be determined until after the lease is awarded and the space layout completed. When the Government layout departs from the projection, the lessor will be paid for the actual quantity provided if the total number of items varies more than 15 percent above or below the estimated quantity. GSA will make a lump sum payment or rental increase if the amount of material required by the layout is more than specified or take credit from rental if the amount is less than specified.

b. Offerors are required to state unit prices for the following items that are checked. Prices shall be quoted as fully installed and finished, in the blanks below. This Attachment is a part of the offer:

<input checked="" type="checkbox"/> The price per linear foot of office subdividing ceiling-high partitioning — \$	Exempt (b) (4)
<input checked="" type="checkbox"/> The price per floor mounted duplex electrical outlet — \$	
<input checked="" type="checkbox"/> The price per wall mounted duplex electrical outlet — \$	Exempt (b) (4)
<input checked="" type="checkbox"/> The price per floor mounted fourplex (double duplex) electrical outlet — \$	Exempt (b) (4)
<input checked="" type="checkbox"/> The price per wall mounted fourplex (double duplex) electrical outlet — \$	
<input checked="" type="checkbox"/> The price per dedicated clean electrical computer receptacle — \$	Exempt (b) (4)
<input checked="" type="checkbox"/> The price per floor mounted telephone outlet — \$	
<input checked="" type="checkbox"/> The price per wall mounted telephone outlet — \$	Exempt (b) (4)
<input checked="" type="checkbox"/> The price per interior door — \$	Exempt (b) (4)

And other items listed below:

Above estimated prices include general conditions and profit.

INITIALS: J & CD
Lessor Government

999 017-1111

EAST 52ND STREET

71,075(N.M)

900V JS

(b) (5)

FAST, AND SURE

1. What is the purpose of the study?

GENERAL CLAUSES INCORPORATED BY REFERENCE
(For Small and Temporary Leases)

1. 52.203-1 - OFFICIALS NOT TO BENEFIT (APR 1984)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

2. 552.203-5 - COVENANT AGAINST CONTINGENT FEES (FEB 1990)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

3. 52.203-7 - ANTI-KICKBACK PROCEDURES (OCT 1988)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In the either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract.

4. 52.203-9 REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY - MODIFICATION (NOV 1990)

(Applicable to leases which exceed \$100,000.)

(a) Definitions. The definitions set forth in FAR 3.104-4 are hereby incorporated in this clause.

(b) The contractor agrees that it will execute the certification set forth in paragraph (c) of this clause, when requested by the Contracting Officer in connection with the execution of any modification of this contract.

(c) Certification. As required in paragraph (b) of this clause, the officer or employee responsible for the modification proposal shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY - MODIFICATION (NOV 1990)

(1) I, [Name of certifier], am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certification, I have no information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended* (41 U.S.C. 423) (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (contract and modification number).

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief each officer, employee, agent, representative, and consultant of [Name of Offeror] who has participated personally and substantially in the preparation or submission of this proposal has

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Lessor Government

certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity-Modification (Continuation Sheet), ENTER 'NONE' IF NONE EXISTS)

(SAMPLE - DO NOT COMPLETE OR SIGN THIS CERTIFICATE. THE CONTRACTING OFFICER WILL SPECIFICALLY REQUEST IT WHEN NEEDED.)

[signature of the officer or employee responsible for the modification proposal and date]

[typed name of the officer or employee responsible for the modification proposal]

*Subsections 27(a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(d) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing Contractor responsible for the offer or bid, may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the Contractor. If a Contractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., prior to December 1, 1989), the Contractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Contractor for a period of 6 years from the date a certifying employee's employment with the company ends or, for an agency, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the contractor.

(e) The certification required by paragraph (c) of this clause is a material representation of fact upon which reliance will be placed in executing this modification.

5. 52.203-73 PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1990)

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may —

(1) Reduce the monthly rental under this lease by 5 percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover 5 percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by 5 percent of the amount of the alterations agreement; or

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis therefor. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of

INITIALS: 1 & CD
Lessor Government

such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

6. 52.215-1 - EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (APR 1984)

(a) This clause applies if this contract exceeds \$10,000 and was entered into by negotiation.

(b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this contract or for any shorter period specified in Federal Acquisition Regulation (FAR) Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Contractor's directly pertinent books, documents, paper, or other records involving transactions related to this contract.

(c) The Contractor agrees to include in first-tier subcontracts under this contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, paper, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

(d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

7. 52.219-8 - UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FEB 1990)

(Applicable to leases which exceed \$25,000.)

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124. The Contractor shall presume that

socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

8. 52.219-9 - SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (JAN 1991)

(Applicable to leases which exceed \$500,000.)

(a) This clause does not apply to small business concerns.

(b) "Commercial product," as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product.

"Subcontract," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns and with small disadvantaged business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns and small disadvantaged business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of-

- (i) Total dollars planned to be subcontracted;
- (ii) Total dollars planned to be subcontracted to small business concerns; and
- (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns and (ii) small disadvantaged business concerns.

(4) A description of the method used to develop the subcontracting goals in (1) above

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small and small disadvantaged business concerns trade associations).

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns and (ii) small disadvantaged business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business concerns and small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.

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(9) Assurances that the offeror will include the clause in this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small and small disadvantaged business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists, guides, and other data that identify small and small disadvantaged business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, and (C) if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small and small disadvantaged business sources.

(v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small business or small disadvantaged business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) above, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; *provided*, (1) the master plan has been approved, (2) the offeror provides copies of the approved master plan and evidence of its approval to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) (1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's production generally, for both commercial and noncommercial products, rather than solely to the Government contract. In these cases, the offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by the agency awarding the offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the Contracting Officer.

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(3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.

(h) Prior-compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

9. 52.219-16 LIQUIDATED DAMAGES—SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1989)

(a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this subpart, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business and Small Disadvantaged Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) If, at contract completion, or in the case of a commercial products plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled Small and Small Disadvantaged Business Subcontracting Plans, the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply, shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial products plans; i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled, Small Business and Small Disadvantaged Business Subcontracting Plan, the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial products plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

10. 52.222-26 - EQUAL OPPORTUNITY (APR 1984)

(Applicable to leases which exceed \$10,000.)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

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(2) The Contractor shall take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purpose of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

11. 52.222-35 - AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (APR 1984)

(Applicable to leases which exceed \$10,000.)

(a) Definitions.

"Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Opening that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause—

(1) Includes, but is not limited to, openings that occur in jobs categorized as—
(i) Production and nonproduction;
(ii) Plant and office;
(iii) Laborers and mechanics;
(iv) Supervisory and nonsupervisory;
(v) Technical; and
(vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam era veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings. (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to National security, or (iii) the requirement of listing would not be in the Government's interest.

(d) Applicability. (1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam era veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

12. 52.222-36 - AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)

(Applicable to leases which exceed \$2,500.)

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 USC 793) (the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

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13. 52.222-37 - EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (MAR 1987)

(Applicable to leases which exceed \$10,000.)

(a) The Contractor agrees to report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the Contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.

(f) The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

14. 52.215-22 - PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (JAN 1991)

(Applies when cost or pricing data is required.)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c) (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

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(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) For Department of Defense contracts only, a penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

15. 52.215-24 - SUBCONTRACTOR COST OR PRICING DATA (APR 1985)

(Applies when the clause 52.215-22, above, is applicable.)

(a) Before awarding any subcontract expected to exceed \$100,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$100,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.804-4 of the Federal Acquisition Regulation (FAR) that, to the best of its knowledge and belief, the data submitted under paragraph (a) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds \$100,000 when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) above requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-25, Subcontractor Cost or Pricing Data—Modifications.

SMALL BUSINESS (SB) AND SMALL DISADVANTAGED
BUSINESS (SDB) SUBCONTRACTING PLAN

DATE: September 23, 1992

CONTRACTOR: 666 Fifth Avenue Limited Partnership

ADDRESS: 666 Fifth Ave

CITY: NY STATE: NY ZIP CODE: 10103

SOLICITATION OR CONTRACT NUMBER: MN/9/577

The following, together with any attachments, is hereby submitted as a Subcontracting Plan to satisfy the applicable requirements of FAR Clause 52.219-9.

1. The following goals (expressed in both dollars and percentage of the total planned subcontracting dollars) are applicable to the contract cited above, or to the contract awarded under the solicitation cited.

CONSTRUCTION ASPECT

	DOLLARS	PERCENT
(a) Total planned subcontracting to all types of business concerns under this contract. (Initial Term) (Renewal/option)	\$ (b) (4) \$	
(b) Planned subcontracting to small business (including small disadvantaged businesses). (Initial) (Renewal/option)	\$ (b) (4) \$	% %
(c) Planned subcontracting to small disadvantaged businesses. (Initial) (Renewal/option)	\$ (b) (4) \$	% %

SERVICES ASPECT

	DOLLARS	PERCENT
(a) Total planned subcontracting to all types of business concerns under this contract. (Initial Term) (Renewal/option)	\$ (b) (4) \$	
(b) Planned subcontracting to small business (including small disadvantaged businesses). (Initial) (Renewal/option)	\$ (b) (4) \$	% %
(c) Planned subcontracting to small disadvantaged businesses. (Initial) (Renewal/option)	\$ (b) (4) \$	% %

TOTAL SUBCONTRACTING GOALS (CONSTRUCTION AND SERVICES)
(Add Construction and Service rows from previous page.)

DOLLARS PERCENT

(a)+(a) Total planned subcontracting to all types of business concerns under this contract.

Initial term.....\$ (b) (4) %
Renewal/option.....\$ _____ %

(b)+(b) Total planned subcontracting to small business (including small disadvantaged businesses).

Initial term.....\$ (b) (4) %
Renewal/option.....\$ _____ %

(c)+(c) Total planned subcontracting to small disadvantaged businesses.

Initial term.....\$ (b) (4) %
Renewal/option.....\$ _____ %

(d) A description of the method used to develop the above subcontracting goals:

Bids were solicited and low bidder is a small business general contractor. This General Contractor plans to consider several disadvantaged firms to perform sub-contracting work.

(e) The following principal supplies and services will be subcontracted under this contract, and the distribution among SB and SDB concerns is as follows:

Construction Aspect:

General Contractor - 100% responsible for construction. Total project construction cost approximates \$110,000.00 of this. General Contractor will sub-contract \$90,000.00

see attachment 1

Services Aspect:

Not applicable.

(NOTE: Supplies/services planned to be subcontracted to small business concerns should be identified by an (*); those for small disadvantaged businesses by a (**). As an example, "nails* and plastic bags**, ...janitorial and yard supplies**", etc. Only items applicable to the specific contract should be included. Use attachments if necessary.)

(f) Indirect and overhead costs (Check one below):
_____ have been included X have not been included
in the goals specified in (b) and (c) above.

(g) If "have been included" is checked, explain the method used in determining the proportionate share of indirect and overhead costs to be allocated as subcontracts to small business concerns and to small disadvantaged business concerns.

(h) The following methods were used to identify potential sources for offeror solicitation purposes (see FAR 52.219-9(d)(5)):

General industry experience.

2. The following individual will administer the subcontracting program:

Name: John Marazzo

Address & Telephone: 666 Fifth Ave, NY, NY 10103

212-582-8020

Title: Vice President 666 Fifth Avenue Limited Partnership

This individual's specific duties, as they relate to the firm's subcontracting program, are as follows:

General overall responsibility for this company's SB Program, the development, preparation and execution of individual subcontracting plans for monitoring performance relative to contractual subcontracting requirements contained in this plan, including but not limited to:

- (a) Developing and maintaining bidders lists of SB and SDB concerns from all possible sources.
- (b) Ensuring that procurement packages are structured to permit SB and SDB concerns to participate to the maximum extent possible.
- (c) Assuring inclusion of SB and SDB concerns in all solicitations for supplies or services which they are capable of providing.
- (d) Reviewing solicitations to remove statements, clauses, etc., which may tend to restrict or prohibit SB and SDB participation.
- (e) Ensuring periodic rotation of potential subcontractors on bidders lists.
- (f) Ensuring that the bid proposal review board documents its reasons for not selecting low bids submitted by SB and SDB concerns.
- (g) Ensuring the establishment and maintenance of records of solicitations and subcontract award activity.
- (h) Attending or arranging for attendance of company counsellors at business opportunity workshops, minority business enterprise seminars, trade fairs, etc.

- (i) Conducting or arranging for conduct of motivational training for purchasing personnel pursuant to the intent of the Small Business Act.
- (j) Monitoring attainment of goals.
- (k) Preparing and submitting periodic subcontracting reports required, SF 294 and/or SF 295.
- (l) Coordinating contractor's activities during the conduct of compliance reviews by Federal agencies.
- (m) Coordinating the conduct of contractor's activities involving its SB and SDB subcontracting program.
- (n) Additions to (or deletions from) the duties specified above are as follows:

3. The following efforts will be taken to assure that SB and SDB concerns will have an equitable opportunity to compete for subcontract:

- (a) Outreach efforts will be made as follows:
 - (i) Contacts with minority and SB trade associations.
 - (ii) Contacts with business development organizations.
 - (iii) Attendance at small and minority business procurement conferences and trade fairs.
 - (iv) Sources will be requested from SBA's PASS System.
 - (v) List other efforts to identify potential sources.

- (b) The following internal efforts will be made to guide and encourage buyers:
 - (i) Workshops, seminars and training programs will be conducted.
 - (ii) Activities will be monitored to evaluate compliance with this subcontracting plan.
- (c) SB and SDB concerns source lists, guides and other data identifying SB and SDB concerns will be maintained and utilized by buyers in soliciting subcontracts.
- (d) Additions to (or deletions from) the above listed efforts are as follows:

4. The contractor agrees that the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" will be included in all subcontracts which offer further subcontracting opportunities, and all subcontractors except small business concerns who receive subcontracts in excess of \$500,000 will be required to adopt and comply with a subcontracting plan similar to this one. Such plans will be reviewed by comparing them with the provisions of FAR 52.219-9, and assuring that all minimum requirements of an acceptable subcontracting plan have been satisfied. The acceptability of percentage goals shall be determined on a case-by-case basis depending on the supplies/services involved, the availability of potential small and small disadvantaged subcontractors, and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports (SF 294 and/or SF 295), and the contractor will ensure that its subcontractors agree to submit SF 294 and SF 295.

5. The contractor agrees to submit such periodic reports (SF 294 and/or SF 295) and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the contractor with the subcontracting plan and with the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals," contained in the contract.

6. The contractor agrees that it will maintain at least the following types of records to document compliance with this subcontracting plan:

- (a) SB and SDB concerns source lists, guides and other data identifying SB/SDB concern vendors.
- (b) Organizations contacted for SB and SDB sources.
- (c) On a contract-by-contract basis, records on all subcontract solicitations over \$100,000, indicating on each solicitation (1) whether SB concerns were solicited, and if not, why not; (2) whether SDB concerns were solicited, and if not, why not; and (3) reasons for the failure of solicited SB or SDB concerns to receive the subcontract award.
- (d) Records to support other outreach efforts: Contacts with Minority and Small Business Trade Associations, etc. Attendance at small and minority business procurement conferences and trade fairs.
- (e) Records to support internal activities to guide and encourage buyers: workshops, seminars, training programs, etc. Monitoring activities to evaluate compliance.
- (f) On a contract-by-contract basis, records to support subcontract award data to include name, address, and business size of subcontractor.

(g) Records to be maintained in addition to the above are as follows:

Signed: (b) (6)
Typed Name: John MARAZZO
Title: Vice President
Date: 9/23/92

Plan Accepted By: (b) (6)
Contracting Officer 0
Date: October 14, 1992

SUMITOMO REALTY & DEVELOPMENT (N.Y.), INC.

666 FIFTH AVENUE, NEW YORK, N.Y. 10103

PHONE: (212) 582-8020 FAX: (212) 582-8749

September 29, 1992

Eleni Colevas
General Services Administration
36 Federal Plaza
New York, N.Y.

RE: 666 Fifth Avenue
6th Floor Lease

Dear Ms. Colevas:

This letter is written to clarify the small business and small disadvantaged business plan, previously submitted, pertaining to the above referenced lease.

Of the \$110,000 contract that will be awarded to a General Contractor, Exempt (b) (4) will be subcontracted out to sub-contractors in accordance with the plan. The portion of work that will be subcontracted out includes carpentry, painting, mill work, electric and plumbing. The remaining Exempt (b) (4) will be applied to general conditions, minor demolition, clean-up, and profit and overhead.

I hope this information satisfies your present needs.

Very truly yours,

(b) (6)

John J. Marazzo
Vice President
Director of Asset Management